

unable to work deals with the issue of nature and extent of injury rather than one of the jurisdictional issues enumerated in K.S.A. 44-534a, as amended.

The Legislature empowered the Appeals Board under K.S.A. 44-534a to review preliminary findings pertaining to the following: (1) whether the employee suffered an accidental injury; (2) whether the injury arose out of and in the course of the employee's employment; (3) whether notice was given or claim timely made; and, (4) whether certain defenses apply. Nature and extent is not a preliminary finding that the Appeals Board may review. Further, the Administrative Law Judge has not exceeded his jurisdiction and authority; therefore, the Appeals Board does not have jurisdiction to review this preliminary hearing order under K.S.A. 44-551. This ruling comports with many of our earlier decisions.

If not resolved, the issue raised by the respondent and insurance carrier may be reviewed by the Appeals Board at the time of final award upon proper application.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward, dated September 1, 1994, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frank S. Eschmann, Topeka, KS
Wade A. Dorothy, Lenexa, KS
James R. Ward, Administrative Law Judge
George Gomez, Director